MOTION FILED

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No. 93-17

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

PIPER AIRCRAFT CORPORATION,
Petitioner,
v.
EDWARD CHARLES CLEVELAND,
by and through the Conservator of his
Estate, Kathleen Cleveland,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF THE AIRCRAFT OWNERS AND PILOTS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2 of the Rules of the Supreme Court of the United States, the Aircraft Owners and Pilots Association ("AOPA") applies for leave to file a brief as *amicus curiae* in support of the petition for writ of certiorari of Piper Aircraft Corporation ("Piper"). The brief is attached. Petitioner Piper consents to the filing of this *amicus* brief; Respondent Edward Charles Cleveland ("Cleveland") objects.

The Court is requested to entertain a federal question of national significance that is of utmost importance to owners and pilots of general aviation aircraft. The issue is whether the Federal Aviation Act of 1958 and implementing Federal Aviation Administration ("FAA") Regulations, 14 C.F.R. §§ 23.1-23.1589 (1993), preempt state common law tort claims seeking to impose liability on an aircraft manufacturer for alleged defects in air-

craft design that fully satisfy FAA safety standards. The U.S. Court of Appeals for the Tenth Circuit affirmed a ruling of the U.S. District Court for the District of New Mexico that federal preemption does not exist. The Circuit Court's decision effectively permits a jury to change or supplement federal aircraft design and safety standards with different local requirements. AOPA respectfully submits that the ruling below reflects an erroneous interpretation of congressional intent underlying the Federal Aviation Act and a misapplication of the relevant decisions of the United States Supreme Court.

If allowed to stand, this ruling could have a most deleterious impact on the general aviation industry of this country, which already has been devastated in recent years by mounting costs of product liability litigation and awards. At stake is the very viability of the general aviation industry of the United States and the continuing availability of general aviation aircraft, parts, and products at reasonable cost to civil pilots and aircraft owners. In view of such compelling national interests, Petitioner Piper submits an important question of federal law that clearly should be resolved by this Court. The views of AOPA, the largest organization of general aviation consumers in the world, are particularly relevant and should assist the Court in assessing the significance of the issues presented.

AOPA is a nationwide, non-profit membership association comprised of over 310,000 individual aircraft owners and pilots engaged in the non-carrier segment of aviation known as "general aviation." AOPA's members own approximately 60% of all active general aviation aircraft registered in the United States, and they account for more than two-thirds of the hours flown in the nation's airspace system.

AOPA has consistently espoused the position that if AOPA members are injured as a result of defective aviation products, they are entitled to just compensation and

a fair and efficient system of adjudication. In recent years, however, AOPA members have seen the availability of new general aviation aircraft drastically reduced and prices greatly increased as a result of the explosion in aircraft manufacturer product liability costs resulting from an increasingly unpredictable and inefficient system. The present case highlights that trend.

The Piper Cub is one of general aviation's most venerable aircraft. Its design has been certified and approved by the FAA, and its safety established through a 50-year history of safe flying by AOPA members and others. The Court should grant the petition for certiorari to resolve finally this issue of paramount importance to the entire aviation community—consumers, manufacturers, and the FAA—whether federal regulation in the field of aircraft design and safety preempts state action to impose different standards. A finding of federal preemption would not affect the availability of common law remedies in many types of aircraft product liability cases, including those involving defects or deficiencies in the manufacturing process, failure to warn consumers of subsequently discovered potentially hazardous conditions, or failure to conform to federal standards.

For the foregoing reasons, AOPA moves for leave to file the attached brief urging that the Court grant certiorari.

Respectfully submitted,

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Dated: July 28, 1993

QUESTION PRESENTED

Whether the Federal Aviation Act of 1958 and Federal Aviation Administration ("FAA") Regulations thereunder, which prescribe safety standards for aircraft design, preempt state common-law tort claims that seek to impose liability on aircraft manufacturers for utilizing aircraft designs determined by the FAA to be safe and in full compliance with all applicable federal aircraft standards.

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BRIEF OF THE AIRCRAFT OWNERS AND PILOTS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

The Aircraft Owners and Pilots Association ("AOPA") respectfully submits this brief as *amicus curiae* in support of the petition for certiorari filed by Piper Aircraft Corporation ("Piper"). AOPA urges the Court to review the decision below in order to determine that the product liability claims of Respondent Edward Charles Cleveland ("Cleveland"), based on alleged failure of the manufacturer to exceed federal design and safety requirements, are preempted by paramount federal law and regulations establishing aircraft design and safety standards.

STATEMENT OF INTEREST AND SUMMARY OF POSITION

Pursuant to comprehensive and detailed regulations, 14 C.F.R. pts. 21 & 23 (1993), the FAA approved and certified as safe the tailwheel, tandem-seat design of the 1970 single-engine Piper Super Cub aircraft involved in this case. Respondent Cleveland, while piloting the airplane during acceleration for takeoff, collided with a van deliberately parked on the runway by a third party. The rear seat of Cleveland's airplane, from which seat it was being piloted, was equipped with a lap belt as specified by federal regulations. A shoulder harness for the rear seat, however, was not required. The decision to install a rear shoulder harness was a matter of owner discretion. Respondent received extensive head injuries in the collision.

Notwithstanding FAA approval of the design and crashworthiness of Cleveland's Super Cub, a jury found that Petitioner Piper was negligent under New Mexico common law for utilizing the tailwheel, tandem-seat design and for not installing a rear seat shoulder harness. The Court of Appeals for the Tenth Circuit reversed and ordered a new trial for reasons not material to the instant petition. On remand, the U.S. District Court for the District of New Mexico denied Piper's motion for summary judgment on grounds that the Federal Aviation Act of 1958, 49 U.S.C. App. §§ 1301-1557 (1988 & 1991 Supp.), and implementing FAA regulations preempt the field of aircraft design and safety standards. The Court of Appeals affirmed.

Petitioner Piper asserts that Cleveland's common law claims, which essentially invite a lay jury to supplement the airplane's design requirements, are preempted by federal regulation and certification of aircraft design and safety. AOPA fully supports Piper's position. AOPA also urges the Court to invite the submission of briefs from the General Aviation Manufacturers Association and the FAA, both of which filed *amicus* briefs below, so that the Court may have before it the views of all parties en-

gaged in this country in the manufacture, regulation, and operation of general aviation airplanes of the type involved in the present case (*i.e.*, small single or multi-engine aircraft not used in scheduled airline or military operations). AOPA desires the Court to consider the views of the broad spectrum of general aviation consumers who, while not affected by the immediate pecuniary outcome of the present case, are vitally concerned with aviation safety, the continued availability of reasonably-priced general aviation aircraft and products, and the roles of federal and state governments with regard to aircraft design and certification.

AOPA is the largest organization of general aviation consumers in the world. It is a nationwide, non-profit membership association of over 310,000 individual aircraft owners and pilots. AOPA's members own approximately 60% of the active general aviation aircraft in the United States and account for about 70% of the hours flown in the nation's airspace. Thousands of AOPA's members own or fly Piper Cubs and similar tailwheel aircraft.

A consumers' organization like AOPA ordinarily might be expected to favor expansive product liability protection and thus oppose federal preemption of common law tort claims. AOPA maintains that if its members are injured by defective aviation products, they are entitled to just compensation. In recent years, however, the availability of new general aviation aircraft has been reduced severely as a result of the explosion in aircraft manufacturer product liability costs resulting from an increasingly unpredictable and inefficient system of adjudication. Similarly, the costs of aircraft repair parts and products have drastically increased. In order to continue flying, AOPA members must have access not only to safe, but reasonably priced, aviation products.

The basic design of the Piper Cub is not new. The general safety and airworthiness of the airplane has been

established, by thousands of AOPA members and others, over a period of some 50 years. In the circumstances of this case, we urge the Court to rule that a state common law product liability claim, based on the alleged failure of a manufacturer to exceed federal requirements, is preempted by federal law in the field of aircraft design and safety.

ARGUMENT

This brief is not intended to restate Petitioner's thorough analysis (with which AOPA is in accord) of the decision of the Court of Appeals below. Rather, AOPA wishes to emphasize the concerns of general aviation owners and pilots implicated by the outcome of this case and constituting the special and important reasons of national importance that warrant a granting of certiorari by this Court.

Expansive and indiscriminate application of product liability law threatens to destroy the general aviation industry and deprive AOPA members of competitive product sources. Without question, aviation consumers are entitled to reasonable compensation for losses resulting from defective or negligently manufactured products. And, a finding of federal preemption in this case would not deprive them of a common law tort remedy in many types of aircraft product liability cases, such as involving defects or deficiencies in the manufacturing process, failure to warn consumers of subsequently discovered potentially hazardous conditions, or failure to conform to federal standards.

The instant case, however, involves no claim that Respondent Cleveland's Super Cub was defective or negligently constructed. Cleveland alleges rather that the manufacturer was negligent for failing to foresee a design requirement exceeding federal standards that potentially could have made the aircraft safer to operate under the circumstances resulting in this particular accident. AOPA

is concerned that should the lower courts' decisions be allowed to stand, juries throughout the nation will, in effect, undertake the *ad hoc* redesign of aircraft, previously certified by the federal expert agency, to meet whatever supplemental standards might be suggested in hindsight based on the peculiar facts of a given accident.

Aircraft design involves a complex interrelation of aerodynamic considerations of strength, weight, shape, maneuverability, and other factors. One aspect of aircraft design cannot be altered without compensatory changes to other design characteristics. Any aircraft can conceivably be made "safer" through alterations, for example, in size, shape, structural configuration, or material composition. Any such changes must be offset, however, by modifications in engine size, weight, cargo capacity, and fuel consumption. Permitting juries to engage in aircraft redesign thus destroys the intended utility of a given airplane and negates the purpose for which it was manufactured and purchased. Moreover, a change to any one aspect of an airplane's design necessitates a complete reassessment and recertification by the FAA of the aircraft as a whole.

For these reasons, the Federal Government, as acknowledged by the state legislatures, has occupied the field. *See* Petition for Certiorari at 5, n.4. Supplemental jury-imposed design and safety standards pose great potential for conflict with the comprehensive federal aircraft certification system.

The absence of a definitive pronouncement by this Court on the federal preemption question presented in the instant petition has impacted most adversely on the availability in this country of reasonably-priced general aviation airplanes and aircraft products. Statistics currently available reflect a 90% decline in production of new general aviation aircraft during the 1980s, with only 1,535 airplanes manufactured in 1989 as compared to 17,000 in 1979. During the same period, which also

witnessed a steadily improving aircraft safety record, U.S. aircraft manufacturer expenses for product liability judgments, settlements, and defense soared from $24 million to $210 million annually. In substantial part due to this liability crisis, for instance, Cessna Aircraft Corporation, the second largest aircraft manufacturer in the United States and previously the world's leading supplier of piston-powered general aviation aircraft, ceased production of piston-powered airplanes in 1986. *Hearings on S. 640, General Aviation Accident Liability Standards Act, Before the Senate Comm. on the Judiciary,* 101st Cong., 2nd Sess., at 3 & 46 (Mar. 9, 1990) (statements of Sen. Kassebaum and Robert Martin).

AOPA believes this severe decline in general aviation aircraft production and the drastic increase in cost of airplanes and aircraft products has been caused in large measure by the huge expense of litigating product liability claims, along with the unpredictability and inconsistency of common law judgments from state to state, arising from the lack of a definitive ruling on the issue of federal preemption in the field of aircraft design and safety standards. Despite the best efforts of airplane designers, manufacturers, mechanics and pilots, the inherent dangers associated with aviation can never be eliminated entirely. It is difficult to envision how any general aircraft manufacturer could long remain in business if required to anticipate jury design requirements, possibly conflicting from state to state, different from federal certification standards.

The courts below ruled that federal regulation does not preempt state action in the field if the state requirements merely supplement federal criteria by imposing stricter standards. The lower courts believed that local supplementation would not conflict with federal regulation since a manufacturer arguably could comply both with state common law standards and federal regulations by following the more stringent of the two. Resolution of

the issue of federal preemption, particularly when it involves matters of such vital national concern as aviation safety and the continued existence of the U.S. general aviation industry, should not rest on such speculation.

Manufacturers cannot reasonably predict what supplemental jury standards might conceivably be applied from time to time on an *ad hoc* basis. An intolerable burden is imposed on manufacturers to require that they speculate, on pain of substantial litigation costs and multimillion dollar judgments, as to the supplemental standards a jury may devise in light of the unique circumstances of a specific accident. Additionally, as Petitioner persuasively explains, an aircraft manufacturer is prohibited by federal regulation from modifying the design or safety features of its existing aircraft without FAA approval and owner compliance. Petition for Certiorari at 23. State common law design and safety requirements thus come into actual conflict with the FAA aircraft certification process. If allowed to stand, the ruling below will unfairly subject manufacturers to enormous liability for constantly evolving safety deficiencies, as perceived by juries, which manufacturers are severely constrained to correct.

Congressional intent to occupy the field clearly is implied from the essential requirement for national uniformity in aircraft design and safety standards. The patchwork of state jury awards facilitated by the ruling below will greatly burden, if not end, interstate commerce in the manufacture and sale of general aviation aircraft. The Federal Aviation Regualtions abound with design and safety standards developed over many years that could, in effect, be invalidated under the supplementation rationale of the courts below. The airworthiness of entire makes of aircraft could thus be called into question.

An aircraft in flight, for example, is subject to severe structural stress resulting from abrupt maneuvering or turbulence. Unless properly "stressed," an airplane's wings literally may be pulled off in a sharp climb. To protect

against structural failure, federal regulations provide that an airplane in the "normal" category, such as Respondent's Super Cub, will not be certified unless it is demonstrated to be capable of withstanding centrifugal forces of up to 3.8 times the aircraft's loaded weight (expressed as gravity or "g" forces). 14 C.F.R. § 23.337(a)(1) (1993). Also, the speed at which an aircraft "stalls," or literally stops flying (as a result, generally speaking, of too little air flowing over the wing to provide "lift"), specified by the FAA as a condition of certification of a single-engine airplane in the landing configuration is not more than 61 knots per hour. 14 C.F.R. § 23.49(a), (b)(1)(2) (1993). Should a jury be permitted to decree that an aircraft manufacturer could have exceeded these standards by designing a "safer" airplane capable of withstanding, for instance, 5 "g's" or having a stall speed of 50 knots, chaos would exist in the aviation industry and among the owners of general aviation aircraft.

The narrow federal preemption ruling sought in the present case would not implicate many types of common law product liability claims involving aircraft certified by the FAA as safe and crashworthy. The only issue here is disposition of a claim based on an alleged failure to supplement or exceed federal design requirements. Common law claims would proceed in cases involving, among others, alleged failure of a manufacturer to comply with federal safety requirements, defects or deficiencies in the manufacturing process, or failure to warn consumers of known or subsequently discovered defects. Where, however, a manufacturer has met and fully complied with federal requirements, the manufacturer should not be compelled to anticipate the design and safety standards a jury in one or more of the 50 states may decide to require in the aftermath of a given accident. Otherwise, the nation will witness the continuing decline in availability of reasonably affordable general aviation products and aircraft. Hundreds of thousands of general aviation

pilots and enthusiasts may be forced to limit or curtail the pursuit of their avocation. Moreover, financial ripples will be felt throughout the industry—impacting most adversely on suppliers of general aviation products, fuel, and services; aircraft mechanics; charter pilots; emergency services providers; flight instructors; and untold others whose livelihoods depend on a robust general aviation industry in this country.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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